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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,603	01/05/2004	Carrie Johnson	BE1-0051US	2997

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LEE & HAYES, PLLC  
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SPOKANE, WA 99201

EXAMINER
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DABNEY, PHYLESHA LARVINIA

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/751,603

Applicant(s)

JOHNSON ET AL.

Examiner

Phylesha L. Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to the Application filed on 23 October 2007 in which claims 1-20 are pending.

#### ***Claim Objections***

Claims 4, 7-8, and 19 are objected to because of the following informalities: there are enumerable grammatical, antecedence errors in the claims, such as the "to the attached" in incorrect in claim 4; the grammatical article "an" in incorrect in claim 7; the article "the membrane" lacks antecedence in claim 19; and the grammatical article "the vertical support members" of claim 7 is incorrect antecedence with claim 1. Review the remaining claims and make the appropriate correction.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaudry (U.S. Patent No. 4,355,650).

Regarding claim 1, Beaudry teaches a weather guard, comprising: a frame comprising a plurality of interconnected rigid members defining a supporting structure, the frame further comprising: a pair of opposed horizontal transverse members (16) rigidly attached to a pair of

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opposed cross members (25, 26) substantially perpendicular to the transverse members forming a substantially horizontal rigid body; at least one downwardly extending vertical support member (11b, 11c, 11d; 15a, 15b) connected to the horizontal rigid body, the at least one vertical support member is connected to one of the cross members; at least one bracket (11e) comprising a first end and a second end, the first end is attached to the horizontal rigid body (16; 25, 26) and the second end extends downwardly at an angle  $\theta$ , wherein the second end of the at least one bracket tapers such that it is attached to the vertical support member (near 12); and a membrane (13) attached to the frame defining an opening, wherein the membrane forms a shield against environmental conditions inside the opening.

Regarding claim 2, Beaudry teaches the weather guard of claim 1, further comprising two opposing downwardly extending vertical support members (11b, 11c, 11d; 15a, 15b) connected to each one of the corresponding cross members (25, 26) of the substantially horizontal rigid body.

Regarding claim 3, Beaudry teaches the weather guard of claim 1, further comprising two brackets (11e; 15a, 15b) attached to any one of the opposing cross members (25, 26), the transverse members, and an intersection point thereof.

Regarding claim 4, Beaudry teaches the weather guard of claim 1, further comprising a first leg and a second leg (47; col. 6 lines 18-30) for anchoring the weather guard into the ground, wherein one end of the first and second legs is attached ~~to the attached~~ at one end to a

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corresponding vertical support member.

Regarding claim 5, Beaudry teaches the weather guard of claim 1, wherein the vertical support member (11b, 11c, 11d; 15a, 15b) is extendable (col. 5 lines 33-41).

Regarding claim 6, Beaudry teaches the weather guard of claim 5, wherein the vertical support member (11b, 11c, 11d; 15a, 15b) is telescopically extendable (col. 5 lines 33-41).

Regarding claim 7, Beaudry teaches the enclosure of claim 1, further comprising an horizontal transverse brace member (11a; 15a, 15b) attached between the vertical support members.

Regarding claims 8 and 20, Beaudry teaches the enclosure of claim 1, further comprising a fastener (46) for removeably attaching the weather guard as claimed.

Regarding claim 9, Beaudry teaches the weather guard of claim 1, wherein the membrane is a single impermeable membrane (13, col. 4 lines 31-34, wherein it is stated that it is made of plastic material).

Regarding claim 19, Beaudry teaches a weather guard, comprising: means for supporting, comprising: a pair of opposed transverse horizontal means (16) for holding the membrane in a horizontal position rigidly attached to a pair of opposed cross means (25, 26) for holding

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substantially perpendicular to the opposed transverse horizontal means for holding; and means (13) for shielding attached to the means for supporting defining an opening.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaudry in view of Simpson (U.S. Patent No. 4,884,589).

Regarding claims 10-11, Beaudry teaches all of the limitations as supported in the 35 U.S. C 102 rejection of claims 1 and 19 above, except a membrane (13) attached to the frame defining an opening, wherein the membrane forms a shield against environmental conditions inside the opening.

Beaudry does not teach first and second back panels forming a back cover of the weather guard, wherein the first and second back panels are adapted to releasably fasten to each other.

In the similar field of providing a shelter from the environment, Simpson teaches including releasable panels in the cover as windows, doorways, or the like in sections of the cover to increase viewing area when the door or window means is open, or provide privacy when closed (as shown in figure 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include releasable panels in the cover of Beaudry, as taught by Simpson for the reasons stated.

Regarding claim 12-18, see the rejection of claims 2-8 respectively.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494.

The examiner can normally be reached on Mondays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**Any response to this action should be mailed to:**  
Commissioner of Patents and Trademarks  
P O Box 1450  
Alexandria, VA 22313-1450

**Or faxed to:**  
(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

**Hand-delivered responses should be brought to:**  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 28, 2007

PLB

  
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